APPENDIX A.

Opinion of the Court of Appeal.

In the Court of Appeal of the State of California, Second Appellate District, Division Five.

People of the State of California, Plaintiff and Respondent, vs. Vicki Laurel Parker, Defendant and Appellant. Crim. No. 12770.

Filed: March 6, 1968.

APPEAL from an order of the Superior Court of Los Angeles County granting probation. Richard F. C. Hayden, Judge. Order affirmed.

Harry E. Weiss for Defendant and Appellant.

Thomas C. Lynch, Attorney General, William E. James, Assistant Attorney General, and Elizabeth Miller, Deputy Attorney General for Plaintiff and Respondent.

Defendant Vicki Laurel Parker was convicted by a court, sitting without a jury, of violating section 11500 of the Health and Safety Code (possession of heroin) and section 4573.6 of the Penal Code (possession of narcotics in booking office of a jail). She appeals from an ensuing order of the court suspending proceedings and granting probation.[1]

In essence, two grounds for reversal are advanced: (1) the heroin substance was illegally obtained, and (2)

[1]The notice of appeal reads that defendant appeals "from the judgment and sentence"; however, no sentence was pronounced. The proceedings were suspended and order granting probation made. The order is nevertheless deemed a final judgment for purposes of appeal. (Pen. Code § 1237, subd. 1.)

the implied finding of a knowing possession of narcotic substance with knowledge of its narcotic nature is not adequately supported by the evidence. In her closing brief, defendant also claims that the order appealed from violates section 654 of the Penal Code.

We have reviewed the record and have concluded that the order appealed from should be affirmed.

Officer Ernest S. Baker and his partner, Officer Doran, riding in a marked black and white police vehicle, saw defendant "run a red light" as she drove through the Alvarado Street intersection while headed west on Wilshire Boulevard in Los Angeles about 10:30 p.m. on May 24, 1965. Defendant was stopped and cited for this traffic offense. Prior to Officer Baker's writing the citation, Officer Doran checked with "R and I" via their police radio. When Officer Baker had just about completed writing the citation information came back via police radio that there was an outstanding traffic warrant against the defendant.

The officers arrested defendant on the warrant. She asked to be informed as to what the warrant was for as she could recall no traffic violation for which a warrant could issue. She demanded that she be shown the warrant.

She was thereupon instructed to park her car around the corner on Parkview off of Wilshire and to lock her car. This took five to ten minutes. Defendant was then transported in the police car to the main jail booking office.[2] Defendant testified that at the "sta-

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[2]The settled statement bringing up the portion of the trial court proceedings which could not be transcribed due to the reporter's original notes being mislaid, uses the term "police sta-

tion" she repeated her request to see the warrant and be informed of the charge, but that her request was ignored and she was told to shut up.

While waiting for the traffic warrant to be brought to the main jail, defendant was seated on a bench in the women's main booking section. Officer Baker, from a distance of ten to twelve feet away, observed defendant fumbling around the area of her skirt and left hip. Baker approached her and in so doing further observed that defendant was clutching something in her left hand. He saw defendant then let go of an object which fell down through a six inch space between the bench and the wall. He picked up the object from underneath the bench. There was no other debris in the area. The object turned out to be a condom containing white powder, which a police chemist later found to be 5.37 grams in weight and of 20 per cent heroin in content.

After seeing the white powdery content of the condom, Baker asked defendant if he could look at her arms. She replied, "Yes." Baker, who prior to that time had seen hypodermic needle marks on narcotic addicts and pushers around seven or eight hundred times, noticed what appeared to be hypodermic needle marks which "started on the back of her hands, ran up the top of her, what you would call her forearm—they were rather scattered, they weren't like they normally are on most people who usually use narcotics—they were spread out."

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tion"; the reported testimony of Officer Baker reflects "main jail." The version favorable to respondent is adopted. (*People v. Sweeney* (1960) 55 Cal.2d 27, 33; *People v. Newland* (1940) 15 Cal.2d 678, 681.)

Defense counsel moved to have the foregoing testimony stricken upon grounds that they constituted conclusions of a nonexpert. The magistrate[3] denied the motion, holding the qualificational foundation of the officer as an expert sketchy but sufficient.

Defendant's version of the incident, to which she testified at trial, was as follows: She saw something on the floor. Being curious, she picked it up, ascertained that it was nothing which she wanted, and dropped it back onto the floor. It was at this juncture that the officer looked at her, picked up the object, and claimed that it was contraband. She had no drugs on her at the time of arrest and she had no knowledge from where the object came. Her only connection with it was to pick it up, examine it, and drop it back on the floor.

The officers were performing their duties properly in stopping the defendant and citing her for "running the red light." (Pen. Code § 836, subd. 1; Veh. Code § 21453(a).) Upon receiving information over official police radio channels that there was a traffic warrant outstanding against defendant, they had the right to arrest her on the warrant even though it was not in their possession. (*People v. Kraps* (1965) 238 Cal.App. 2d 675, 679; *People v. Stewart* (1961) 189 Cal.App. 2d 176, 178-179; cf. *People v. Rightnour* (1966) 243 Cal.App.2d 663, 666; and see *People v. Webb* (1967) 66 Cal.2d ....., ...* [burglary warrant].) Upon de-

[3]The case was submitted in the trial court upon the reporter's transcript of the preliminary hearing, with reservation of rights to raise objections to the evidence and to adduce supplementary testimony if the defendant should so choose.

*66 A.C. 99, 104.

fendant's demand to see the warrant, it was incumbent upon the police to show it to her as soon as practicable. (Pen. Code § 842.)

Taking the defendant into custody and transporting her down to the main jail was for the dual purpose of booking her on the warrant and to obtain the warrant to show it to the defendant as she demanded. The precise offense charged in the warrant, confirmation as to identity, and the amount of bail to be required could not be ascertained without getting hold of the warrant itself. It was while the officers and defendant were waiting for the warrant to be brought to the main jail that the events narrated above took place. No showing is made that more than a reasonable period of time had elapsed for the warrant to arrive.

Even if it had developed later that there was in fact no warrant outstanding against the defendant, the legality of the arrest and her detention up to the time the condom was discovered would not be affected. There was no search in picking up the condom and its contents from the floor. (*People v. Walker* (1962) 203 Cal.App.2d 552, 556; *People v. Ambrose* (1962) 199 Cal.App.2d 846, 850-851.) It was only after the discovery of the condom containing white powder, observation of what appeared to be hypodermic needle marks on defendant's arms, and some conversation with defendant prefaced by a proper *Dorado-Escobedo* type of warning[4] that defendant was booked on suspicion of illegal possession of narcotics, a felony.

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[4]Trial of this case was prior to June 13, 1966, so *Miranda* requirements are not applicable. (*Johnson v. New Jersey* (1966) 384 U.S. 719, 734; *People v. Rollins* (1967) 65 Cal.2d 681, 683.

(This footnote is continued on the next page)

Defense counsel made motions to suppress the real evidence on the grounds that it was obtained in violation of the Fourth Amendment and the Fourteenth Amendment to the United States Constitution and article I, section 19 to the California Constitution, at the preliminary hearing, at the time of his motion to set aside the information (Pen. Code § 995), at time of trial, and again on his motion for a new trial. ~~As for any demand for the production of the warrant, *the record is silent up until the time of the motion* for new trial. In response to the court's inquiry prompted by defense counsel's demand at that time, the People's counsel stated that the warrant had been destroyed. Neither the court nor the defense counsel pursued the matter further to ascertain when and under what circumstances it was destroyed. No pre-trial motion for its production appears in the record. Nor does it appear that any objection under the best evidence rule was made to the officer's oral testimony concerning the warrant.~~

~~Under such circumstances, production of the warrant was waived. (See *People v. Stewart* (1961), *supra*, 189 Cal.App.2d 176, 179-180.) Absent evidence to the contrary official duty is presumed to have been performed. (*People v. Farrara* (1956), 46 Cal.2d 265, 268-269.)~~

Defendant claims that under the circumstantial evidence rule that where the case rests chiefly or substantially upon circumstantial evidence open to two equally reasonable interpretations, one pointing to defendant's

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Contents of the conversation are not in evidence, since they were ordered stricken by the committing magistrate upon grounds that certain foundational requirements were missing at the time a motion to strike was made by defense counsel. Later the missing elements of the foundation were developed but the People's counsel at the preliminary hearing did not seek to reinstate the contents of the conversation which could have been done.

guilt and the other to his innocence, the defendant is entitled to an acquittal, her conviction under neither of the two counts is sufficiently supported by the evidence. It is adequate to recall that this rule is one to be applied at the trial level. Upon appeal, it is incumbent on appellant to make a clear showing "that upon no hypotheses whatever is there sufficient substantial evidence to support the conclusion reached in the court below" (*People v. Tom Woo* (1919) 181 Cal. 315, 326; Witkin, Cal. Evidence (2d ed. 1966) pp. 1056-1057), before the finding of guilt based upon circumstantial evidence may be set aside (*People v. Green* (1939) 13 Cal.2d 37, 42). The evidence here is not overwhelming but it was sufficient to support the finding of guilt upon both counts, including the constitutent essential elements of knowing possession and knowledge of the narcotic nature of the substance possessed.

The contention that the order appealed from violates the proscription of section 654 of the Penal Code is not well taken. (*People v. Buice* (1964) 230 Cal.App.2d 324, 347; *People v. King* (1963) 218 Cal.App.2d 602, 611.)

The order suspending proceedings and granting probation is affirmed.

Aiso, *J. pro tem.***

We concur:

Kaus, *P. J.*

Stephens, *J.*

**Assigned by Chairman of the Judicial Council.

Modification of Opinion on Denial of Rehearing.

In the Court of Appeal of the State of California, Second Appellate District, Division Five.

People of the State of California, Plaintiff and Respondent, vs. Vicki Laurel Parker, Defendant and Appellant, 2nd Criminal No. 12770.

Filed April 3, 1968.

THE COURT:

The typewritten opinion filed herein on March 6, 1968, is modified as follows:

1. Delete the portion of the opinion beginning with the word "A" appearing on line 9 of page 9 and ending with the numerals "269.)" on line 10 of page 10 and in lieu thereof insert the following: "No pretrial motion demanding production of the warrant appears in the record. The record is also silent as to whether defendant renewed her demand to see the warrant at the police station after she was booked on the felony narcotics charge. Up to the time the reporter's transcript records defendant's motion for new trial, the record is silent as to whether defendant demanded production of the warrant at time of trial. The reporter's transcript of the motion for new trial reflects only the following: 'The record on the subject of a warrant is simply the officer's testimony that he learned that there was a warrant and arrested her pursuant to that authority . . . And then there was some offer by the People at sometime in the trial to show a form of warrant, but no warrant itself in this case was offered . . . because . . . It was destroyed.' Whether an objection under the best evidence rule was registered against the

officer's oral testimony concerning the warrant is not shown.

"The settled partial statement on appeal only sets forth that after the trial court had read and considered the reporter's transcript of the preliminary hearing, 'The defendant thereupon moved the court to suppress the evidence, upon the ground that no probable cause had been shown for arrest, or for arrest at nighttime for alleged misdemeanor, and for such other cause, and for lack of probable cause, was therefore unlawful and in violation of defendant's constitutional rights under Article I, Section 19, California Constitution, and IVth Amendment and XIVth Amendment to the United States Constitution.' The motion was denied.

"On the motion for new trial, defendant's counsel asserted that since no showing had been made that the traffic warrant had any indorsement of a magistrate that it could be served at night, the arrest on the warrant was illegal.

"Section 840 of the Penal Code provides in part: 'If it [the offense] is a misdemeanor, the arrest cannot be made at night, unless upon the direction of the magistrate, indorsed upon the warrant, except when the offense is committed in the presence of the arresting officer.' It has been held that where no traffic violation was being committed at the time of a nighttime arrest on a traffic warrant, the arrest upon the warrant was illegal. (*People v. Koelzer* (1963) 222 Cal. App. 2d 20, 23.) Here, however, defendant's running a red light in the presence of the arresting officers while she was out at night was the cause for her being stopped. While she was being cited for this new offense, the officers learned by police radio that there was a traffic

warrant outstanding against her. *Koelzer, supra,* is therefore distinguishable on the facts. Likewise to be distinguished is the situation where the police start out from the station armed only with a traffic warrant, bearing no magistrate's indorsement that it be served at night, to make a nighttime arrest on the strength of the warrant alone. It would not be reasonable under the circumstances of this case to hold that defendant could not be arrested until daybreak the following morn."

2. Delete the figures "75" appearing at the end of line 3 of footnote 4 on page 8 and in lieu thereof insert the figures "65."

The petition of defendant and appellant for a rehearing is denied.

APPENDIX B.

§ 836. [*Arrests by peace officers: Arrest under warrant or without warrant.*] A peace officer may make an arrest in obedience to a warrant, or may without a warrant, arrest a person;

1. Whenever he has reasonable cause to believe that the person to be arrested has committed a public offense in his presence.

2. When a person arrested has committed a felony although not in his presence.

3. Whenever he has reasonable cause to believe that the person to be arrested has committed a felony, whether or not a felony has in fact been committed.

* * *

§ 842. [*Necessity that warrant be in possession of arresting officer: Warrant must be shown, when.*] An arrest by a peace officer acting under a warrant is lawful even though the officer does not have the warrant in his possession at the time of the arrest, but if the person arrested so requests it, the warrant shall be shown to him as soon as practicable.

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§ 848. *Duty of officer arresting with warrant.* An officer making an arrest, in obedience to a warrant, must proceed with the person arrested as commanded by the warrant, or as provided by law.

* * *

§ 1269b. [*Authority of officer in charge of jail and clerk of justice or municipal court: Limitations and prohibitions.*]

The officer in charge of a jail wherein an arrested person is held in custody and the clerk of the justice or municipal court of the judicial district in which the offense was alleged to have been committed and the clerk of the superior court in which the case against the defendant is pending shall have authority to approve and accept bail in such amount as fixed by the warrant of arrest or schedule of bail or order admitting to bail in cash or surety bond executed by a certified, admitted surety insurer as provided in the Insurance Code, to issue and sign an order for the release of the arrested person, and to set a time and place for the appearance of the arrested person before the appropriate court and give notice thereof, as follows:

(a) For [1] appearance before the court of an arrested person who has been arrested for having committed a misdemeanor and is being held in custody prior to the filing of a formal complaint, and for appearance before the court of a defendant charged with a misdemeanor by a formal complaint filed in the court. If a defendant has appeared before a judge of the court on the charge contained in the complaint the bail shall be in the amount fixed by such judge at the time of such appearance; if no such appearance has been made the bail shall be in the amount fixed in the warrant of arrest or, if no warrant of warrest has been issued, the amount of bail shall be pursuant to a schedule of bail in such case previously fixed and approved by the judge or judges of the court of the judicial district in which the offense is alleged to have been committed.

(b) For appearance before the court of a defendant charged with a felony by a formal complaint filed in court. If a defendant has appeared before a judge of

the court on the charge contained in the complaint, the bail shall be in the amount fixed by such judge at the time of such appearance; if no such appearance has been made the bail shall be in the amount fixed in the warrant of arrest.

(c) It is the duty of the municipal and justice court judges in each county to prepare and adopt, by a majority vote, a schedule of bail for all misdemeanor offenses. It shall contain a list of such misdemeanor offenses and the amounts of bail applicable thereto as the judges determine to be appropriate, and, if it does not list all misdemeanor offenses specifically, it shall contain a general clause providing for a designated amount of bail as the judges of the county determine to be appropriate for all misdemeanor offenses not specifically listed in the schedule. The schedule of bail may be revised from time to time by the judges of the county, and the senior judge at each county seat shall call not more than two or less than one meeting each year of all municipal and justice court judges in the county for the purpose of establishing or revising a countywise uniform bail schedule. A copy of the schedule shall be sent to the officer in charge of the county jail and to the officer in charge of each city jail within the county.

Upon posting such bail the defendant or arrested person shall be discharged from custody as to the offense on which the bail is posted.

All money and surety bonds so deposited with such officer shall be transmitted immediately to the judge or clerk of the court by which the order was made or warrant issued or bail schedule fixed.

If a defendant or arrested person so released fails to appear at the time and in the court so ordered upon his

release from custody, the court before which he was ordered to appear may forfeit the cash bail or surety bond, with or without issuing a warrant, and if the bail is a surety bond the surety company is obligated as provided by Section 1306 of the Penal Code, subject to the right of the court to set aside the forfeiture as provided by law.

(d) For the appearance before the proper court of a person who has been arrested for an offense on a warrant issued in a county of this state other than the county where such person is held in custody. [Amended by Stats 1965 ch 645 § 2.]

* * *

§ *4573.6* [*Possession of unauthorized narcotics, drugs and alcoholic beverages in prisons, etc.*] Any person having in his possession in any state prison, prison road camp, prison forestry camp, or other prison camp or prison farm or any place where prisoners of the State are located under the custody of prison officials, officers, or employees, or in any county, city and county jail, road camp, farm, or any place or institution, where prisoners or inmates are being held under the custody of any sheriff, chief of police, peace officer, probation officer, or employees, or within the grounds belonging to any such jail, road camp, farm, place or institution, any narcotics, or drugs in any manner, shape, form, dispenser or container, or alcoholic beverage, without being authorized to so possess the same by the rules of the Department of Corrections, rules of the prison or jail, institution, camp, farm or place, or by the specific authorization of the warden, superintendent, jailer or other person in charge of the prison, jail, institution, camp, farm or place, is guilty of a felony.

* * *

CHAPTER 2. PROCEDURE ON ARRESTS

Article 1. Arrests

Application of Chapter

40300. The provisions of this chapter shall govern all peace officers in making arrests for violations of this code without a warrant for offenses committed in their presence, but the procedure prescribed herein shall not otherwise be exclusive of any other method prescribed by law for the arrest and prosecution of a person for an offense of like grade.

Procedure

40301. Except as provided in this chapter, whenever a person is arrested for any violation of this code declared to be a felony, he shall be dealt with in like manner as upon arrest for the commission of any other felony.

Mandatory Appearance

40302. Whenever any person is arrested for any violation of this code, not declared to be a felony, the arrested person shall be taken without unnecessary delay before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made in any of the following cases:

(a) When the person arrested fails to exhibit his driver's license or other satisfactory evidence of his identity.

(b) When the person arrested refuses to give his written promise to appear in court.

(c) When the person arrested demands an immediate appearance before a magistrate.

(d) When the person arrested is charged with violating Section 23102 or 23106.

Optional Appearance Before a Magistrate

40303. Whenever any person is arrested for any of the following offenses and the arresting officer is not required to take the person without unnecessary delay before a magistrate, the arrested person shall, in the judgment of the arresting officer, either be given a 10 days' notice to appear as herein provided or be taken without unnecessary delay before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made.

(a) Sections 10852 or 10853, relating to injuring or tampering with a vehicle.

(b) Sections 23103 or 23104, relating to reckless driving.

(c) Section 2800, insofar as it relates to a failure or refusal of the driver of a vehicle to stop and submit to an inspection or test of the lights upon the vehicle under Section 2804 hereof, which is punishable as a misdemeanor.

(d) Section 2800, insofar as it relates to a failure or refusal of the driver of a vehicle to stop and submit to a brake test which is punishable as a misdemeanor.

(e) Section 2800 and 2803, relating to the refusal to submit vehicle and load to a weighing which is punishable as a misdemeanor.

(f) Section 20002, relating to failure to stop in the event of an accident involving damage to property.

(g) Section 20007, relating to failure to stop after collision with an unattended vehicle.

(h) Section 23109, relating to participating in speed contests *or exhibition of speed.*

(i) Section 14601, relating to driving while license is suspended or revoked.

(j) When the person arrested has attempted to evade arrest.

(k) Section 23332, relating to persons upon vehicular crossings.

(l) Section 2813, relating to the refusal to stop and submit a vehicle to ar inspection of its size, weight, and equipment.

Discretionary Prove ure

40304. Whenever any person is arrested by any member of the California Highway Patrol for any violation of any state law regulating the operation of vehicles or the use of the highways declared to be a misdemeanor but which offense is not specified in this code, he shall, in the judgment of the arresting officer, either be given a 10-day notice to appear in the manner provided in this chapter or be taken without unnecessary delay before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made, or, upon demand of the person arrested, before a magistrate in the judicial district in which the offense is alleged to have been committed.

Offense by Nonresident

40305. Whenever a nonresident is arrested for violating any section of this code while driving a motor vehicle and does not furnish satisfactory evidence of identity and an address within this State at which he can be located, he may, in the discretion of the arresting officer, be taken immediately before a magistrate within the county where the offense charged is alleged to have been committed, and who has jurisdiction over the offense and is nearest or most accessible with reference to the place where the arrest is made. If the magistrate is not available at the time of the arrest and the arrested person is not taken before any other person authorized to receive a deposit of bail, and if the arresting officer does not have the authority or is not required to take the arrested person before a magistrate or other person authorized to receive a deposit of bail by some other provision of law, the nonresident shall be released from custody upon giving a written promise to appear as provided in Article 2 (commencing with Section 40500).

Misdemeanor Procedure Before Magistrate

40306. (a) Whenever a person is arrested for a misdemeanor and is taken before a magistrate, the arresting officer shall file with the magistrate a complaint stating the offense with which the person is charged.

(b) The person taken before a magistrate shall be entitled to at least five days continuance of his case in which to plead and prepare for trial and the person shall not be required to plead or be tried within the five days unless he waives such time in writing or in open court.

(c) The person taken before a magistrate shall thereupon be released from custody upon his own recognizance or upon such bail as the magistrate may fix.

Magistrate Unavailable

40307. (a) When an arresting officer attempts to take a person arrested for a misdemeanor violation of this code before a magistrate and the magistrate or person authorized to act for him is not available, the arresting officer shall take the person arrested before the clerk of the magistrate or the officer in charge of the most accessible county jail, city jail, or other place of detention within the county, who shall admit him to jail in accordance with a schedule, fixed as provided in Section 1269(b) of the Penal Code.

Deposit of Bail: Parking Violations

40309. Whenever a citation is issued for overtime parking in accordance with the provisions of Sections 41102 and 41103 of this code, the amount fixed as bail for the violation charged may be forwarded by United States mail to the person authorized to receive a deposit of bail. Bail forwarded by mail shall be effective only when actually received, and the presumption that a letter duly directed and mailed was received, shall not apply. The provisions of Section 40512 of this code are applicable to bail posted pursuant to this section.

Arraignment for Other Violations

40311. Whenever a person is arrested under authority of a warrant, the court to which such person is taken shall, with his consent, have jurisdiction to arraign him at that time for any other alleged violation

of this code or an ordinance relating to traffic offenses for which he has been issued a written notice to appear in court, notwithstanding the fact that the time for appearance specified in such notice has not yet arrived.

Article 2. Release Upon Promise to Appear

Notice

40500. Whenever a person is arrested for any violation of this code not declared to be a felony, or for a violation of an ordinance of a city or county relating to traffic offenses and he is not immediately taken before a magistrate, as provided in this chapter, the arresting officer shall prepare in triplicate a written notice to appear in court or before a person authorized to receive a deposit of bail, containing the name and address of the person, the license number of his vehicle, if any, the name and address, when available, of the registered owner or lessee of the vehicle, the offense charged and the time and place when and where he shall appear.

Time to Appear

40501. The time specified in the notice to appear must be at least 10 days after such arrest.

Place to Appear

40502. The place specified in the notice to appear shall be either:

(a) Before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made.

(b) Upon demand of the person arrested, before a municipal court judge or other magistrate having jurisdiction of the offense at the county seat of the county in which the offense is alleged to have been committed or before a magistrate in the judicial district in which the offense is alleged to have been committed.

(c) Before a person authorized to receive a deposit of bail.

The clerk and deputy clerks of the municipal and justice courts are persons authorized to receive bail in accordance with a schedule of bail approved by the judges of said courts.

(d) Before the juvenile court, a juvenile court referee, or a juvenile traffic hearing officer within the county in which the offense charged is alleged to have been committed, if the person arrested appears to be under the age of 18 years. The juvenile court shall by order designate the proper person before whom such appearance is to be made.

If the place specified in the notice to appear is within a district or city and county where a department of the municipal court is to hold a night session within a period of not more than 10 days after the arrest, the notice to appear shall contain, in addition to the above, a statement notifying the person arrested that he may appear before such a night session of the court.

Speed Charge

40503. Every notice to appear and every complaint or information charging a violation of any provision of this code regulating the speed of vehicles upon a highway shall specify the approximate speed at which the defendant is alleged to have driven and exactly the

prima facie or maximum speed limit applicable to the highway at the time and place of the alleged offense and shall state any other speed limit alleged to have been exceeded if applicable to the particular type of vehicle or combination of vehicles operated by the defendant.

Delivery of Notice

40504. (a) The officer shall deliver one copy of the notice to appear to the arrested person and the arrested person in order to secure release must give his written promise to appear in court or before a person authorized to receive a deposit of bail by signing two copies of the notice which shall be retained by the officer. Thereupon the arresting officer shall forthwith release the person arrested from custody.

(b) Any person who signs a written promise to appear with a false or fictitious name is guilty of a misdemeanor regardless of the disposition of the charge upon which he was originally arrested.

Copy of Notice

40505. Whenever any traffic or police officer delivers a notice to appear charging an offense under this code to any person, it shall include all information set forth upon the copy of the notice filed with a magistrate and no traffic or police officer shall set forth on any notice filed with a magistrate or attach thereto or accompany the notice with any written statement giving information or containing allegations which have not been delivered to the person receiving the notice to appear.

Filing Copies

40506. The officer shall, as soon as practicable, file a copy of the notice with the magistrate or before a person authorized by the magistrate or judge to receive a deposit of bail specified therein, and a copy with the commissioner, chief of police, sheriff or other superior officer of the arresting officer.

Appearance by Counsel

40507. A written promise to appear in court may be complied with by an appearance by counsel.

Violation of Promise to Appear

40508. (a) Any person willfully violating his written promise to appear in court or before a person authorized to receive a deposit of bail is guilty of a misdemeanor regardless of the disposition of the charge upon which he was originaly arrested.

(b) Any person willfully failing to pay a lawfully imposed fine for a violation of any provision of Division 11 (commencing with Section 21000) of this code within the time authorized by the court is guilty of a misdemeanor regardless of the full payment of the fine after such time.

Notice to Department

40509. (a) Whenever any person has for a period of 15 or more days willfully violated his written promise to appear in court or before the person authorized to receive a deposit of bail, the magistrate or clerk of the court before whom the defendant so promised to appear shall give notice of such fact to the department not ( ) more than 60 days after issuance of the war-

rant. Whenever thereafter the case in which such promise was given is adjudicated the magistrate or clerk of the court hearing the case shall file with the department a certificate showing that the case has been adjudicated.

(b) Whenever any person has for a period of 15 or more days willfully failed to pay a lawfully imposed fine for a violation of any provision of Division 11 (commencing with Section 21000) of this code within the time authorized by the court, the magistrate or clerk of such court shall give notice of such fact to the department after the issuance of a warrant, and after it has been determined that service of such warant cannot be had. Whenever thereafter the fine is fully paid, the magistrate or clerk of such court shall file with the department a certificate showing that the fine has been paid.

Deposit of Bail

40510. The defendant may, prior to the date upon which he promised to appear, deposit bail with the magistrate or the person authorized to receive a deposit of bail.

Fixing Bail

40511. If bail has not been previously fixed and approved by the judges of the court in accordance with a schedule of bail, the magistrate shall fix the amount of bail which is his judgment, in accordance with Section 1275 of the Penal Code, will be reasonable and sufficient for the appearance of the defendant and shall endorse upon the notice a statement signed by him in the form set forth in Section 815a of the Penal Code.

Forfeiture of Bail

40512. If at the time when the case is called for arraignment before the magistrate the defendant does not appear, either in person or by counsel, the magistrate may declare the bail forfeited and may in his discretion order that no further proceedings be had in the case.

Upon the making of the order that no further proceedings be had, all sums deposited as bail shall forthwith be paid into the city or county treasury, as the case may be.

Filing of Complaint

40513. (a) Whenever written notice to appear has been prepared, delivered, and filed with the court, or whenver notice has been given pursuant to the provisions of Section 41102, an exact and legible duplicate copy of the notice when filed with the magistrate, in lieu of a verified complaint, shall constitute a complaint to which the defendant may plead "Guilty" or "Nolo Contendere".

If, however, the defendant violates his promise to appear in court or does not deposit lawful bail, or pleads other than "Guilty" or "Nolo Contendere" to the offense charged, a complaint shall be filed which shall conform to the provisions of Chapter 2 (commencing with Section 948) of Title 5, Part 2 of the Penal Code, and which shall be deemed to be an original complaint, and thereafter proceedings shall be had as provided by law, except that a defendant may, by an agreement in writing, subscribed by him and filed with the court, waive the filing of a verified complaint and elect that the prosecution may proceed upon a written notice to appear.

(b) Notwithstanding the provisions of subdivision (a) of this section, whenever the written notice to appear has been prepared on a form approved by the Judicial Council, an exact and legible duplicate copy of the notice when filed with the magistrate shall constitute a complaint to which the defendant may plead "Not guilty," unless the defendant at the time he enters his plea requests that a verified complaint be filed.

Insurance of Warrant

40514. No warrant shall issue on the charge for the arrest of a person who has given his written promise to appear in court or before a person authorized to receive a deposit of bail, unless he has violated the promise or has failed to deposit bail, to appear for arraignment, trial or judgment, or to comply with the terms and provisions of the judgment, as required by law.

Insurance of Warrant for Violation of Promise to Appear

40515. (a) When a person signs a written promise to appear at the time and place specified in the written promise to appear and has not posted bail, the magistrate shall issue and have delivered for execution a warrant for his arrest within 20 days after his failure to appear before the magistrate, or if the person promises to appear before an officer authorized to accept bail other than a magistrate and fails to do so on or before the date on which he promised to appear, then, within 20 days after the delivery of the written promise to appear by the officer to a magistrate having jurisdiction over the offense.

(b) When the person violates his promise to appear before an officer authorized to receive bail other than a magistrate, the officer shall immediately deliver to a magistrate having jurisdiction over the offense charged the written promise to appear and the complaint, if any, filed by the arresting officer.

Expense to Departments

40516. (a) The expenses incurred by the Department of the California Highway Patrol and the Department of Motor Vehicles in executing any warrant issued as a result of a notice to appear issued by a member of the California Highway Patrol shall be a legal charge against the city or county in which jurisdiction the warrant was issued except where the commissioner authorizes the acceptance of a warrant for execution within 30 days of the date of its issuance.

(b) The commissioner or director shall certify to the Controller the cost of executing warrants on behalf of each city or county under this section. The departments shall be reimbursed for costs as provided in Section 11004.5 of the Revenue and Taxation Code.

(c) The peace officer to whom a warrant has been delivered for execution, upon demand, shall transfer the warrant, if it has not been executed within 30 days of the date of its issuance, to any member of the California Highway Patrol or to the Department of Motor Vehicles for execution.

Change of Venue

40517. (a) Whenever any person has given his written promise to appear before a justice court judge who is other than a justice court judge at the county seat

of the county wherein the offense is alleged to have been committed, he may demand a transfer of the case to a municipal court judge or other magistrate having jurisdiction of the offense at the county seat upon filing with the justice court judge before whom he has promised to appear an affidavit that he believes that a fair trial without excessive penalties cannot be had before the justice court judge. In the event that a trial date has been set before the justice court judge, such affidavit must be filed at least 10 days prior to the trial date.

(b) Thereupon the justice court judge with whom the affidavit is filed shall be without jurisdiction to proceed with the case and shall immediately transfer the case and all papers in connection therewith for further proceedings before a municipal court judge or other magistrate having jurisdiction of such offense at the county seat.

(c) The foregoing method of securing a change of venue is in addition to any other method provided by law for obtaining a change of venue.

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§ *11500. Possession of narcotics other than marijuana forbidden: Previous conviction: Punishment.* Except as otherwise provided in this division, every person who possesses any narcotic other than marijuana except upon the written prescription of a physician, dentist, [1] *podiatrist,* or veterinarian licensed to practice in this State, shall be punished by imprisonment [2] in the state prison for not *less than two years nor* more than 10 years, *and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than two years in prison.*

If such a person has been previously convicted *once* of any *felony* offense described in this division or has been previously convicted *once* of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as [3] *a felony* offense described in this division, the previous conviction shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or is admitted by the defendant, he shall be imprisoned in the state prison for not less than [4] *five* years nor more than 20 years, *and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than five years in prison.*

If such a person has been previously convicted two or more times of any felony offense described in this division or has been previously convicted two or more times of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as a felony offense described in this division, the previous convictions shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or are admitted by the defendant, he shall be imprisoned in the state prison from 15 years to life, and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than 15 years in prison. [Amended by Stats 1961 ch. 274 § 1.]

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